

**Statement of**

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**Before the**

**Surface Transportation and Merchant Marine Subcommittee**  
**Senate Commerce, Science, and Transportation Committee**

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Thank you for giving Union Pacific the opportunity to present our views on the Surface Transportation Board's (STB) decision to suspend Class I rail mergers for 15 months while it writes new merger rules.

My career in the railroad industry began 40 years ago. I started out as a brakeman and worked my way through the ranks to the position I hold today. I have been with this industry when it was on the brink of bankruptcy as well as when it was in its renaissance period. In short, I have seen its many ups and downs, but I'm not sure I have seen a situation like we have today. This is a critical and dangerous time for the railroad industry, and we are clearly at a major crossroads. Which path we take will dictate not only our future, but also the future of many of our customers and the regions we serve. That is why we support the Board's decision to suspend mergers for 15 months as well as the development of new rules that will govern all future consolidations.

I sat through all four days of the Board's hearings on the rail industry, and sadly, I wasn't surprised by what I heard. Many of our customers are frustrated with service -- from all railroads -- that they consider to be inadequate. Moreover, to a person, our customers will tell you that large railroad mergers have exacerbated these problems. Service problems followed all of the big mergers of the 1990s. I am sorry to say that perhaps the worst followed our merger with the Southern Pacific. However, none of the mergers were immune to problems, not even the BNSF merger or the CN/IC merger, as the STB's hearing record indicated. Union Pacific's problems are well behind us now. We turned the corner in the spring of 1998, and our performance levels are equal to or better than pre-merger levels. Even so, our customers are not ready for more mergers. They want better service. Customer after customer testified to this at the Board's hearings. Companies like General Motors, United Parcel Service, Huntsman Chemicals, Hampton Lumber, Arizona Grain, Ball-Foster Glass Container Co., Superior Lumber, Westvaco, and many, many more told the STB we need a time out on rail mergers to give the industry a chance to stabilize and work on service. (By way of example the GM and UPS testimony is attached.)

It is understandable that service problems have led to a call for no more rail mergers. What is worse, and more alarming, is that this last merger announcement has poured gasoline on the fires of those who want to re-regulate the industry. Mergers have not created a single "captive" shipper, or reduced in any way rail-to-rail competition where it existed prior to a merger. Still, there are groups who believe mergers have reduced competition, and are using the service disruptions as leverage to change our regulatory structure to their benefit. Re-regulation, competitive access, open access, forced access -- whatever name you care to use -

- it is nothing more than a governmentally imposed revenue shift from one industry to another. Yes, it will reduce rates, but it will cripple our industry, and require us to shrink our networks, cut service, and lay-off employees. There will be some very large shippers that will initially benefit, but everyone will ultimately suffer as we lack the ability to invest in our system.

We heard about this too at the STB's hearings. Investment bankers like Morgan Stanley Dean Whitter and Goldman Sachs, as well as world-renowned economists such as Nobel Prize winning Kenneth Arrow all testified about the perils of re-regulation. Their testimony was very clear; the financial community does not favor re-regulation. The Staggers Act created the appropriate balance providing protections for shippers while allowing the railroads to price differentially. Their message to the Board was, among other things, don't change the balance of power between shippers and railroads. Doing so will drive the capital markets away from the rail industry. Since the rail industry reinvests on average 19% of its earnings, the lack of capital will make it virtually impossible for the rail industry to ever earn its cost of capital or provide the level of investment necessary to give the quality service our customers' demand.

I know the BNSF and the CN will say we are afraid of competition or that we want to delay their merger while we prepare one of our own, but this is far from true. Under other circumstances, UP would not be very concerned about the BNSF/CN merger. We do not expect this merger to have a major effect on our ability to compete, and we know we can compete effectively with a combined BNSF/CN. In fact, we considered the possibility of a Canadian merger ourselves,

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Re-regulation would cost UP nearly three-quarters of a billion dollars in annual operating revenues.

but we decided that proposing a big merger would be irresponsible because of the risk of re-regulation and because our customers would not want a merger. We think any big merger would be unwise and dangerous in today's environment. Of course, if BNSF/CN were to be approved, that would have a destabilizing effect and force us to take a fresh look at mergers.

Yes, today we are at a crossroads. The announcement of the BNSF/CN merger has created tremendous instability in the rail industry. Our customers are irate that we would even contemplate more mergers, the threat of re-regulation has been increased, and this lack of stability has caused all of our stock prices to sink dramatically. As a result, we believe the Board's decision was appropriate and responsible - - not radical or ill conceived as the BNSF or CN would have you to believe. The Board has a tremendous undertaking before it. Trying to determine what is right for the rail industry and the shipping community it serves will be a complex, time-consuming task. Rushing to conclusions is not the order of the day, caution and prudence are. I think Secretary Slater said it best when he said, "There is no room for error." We also believe the Board has the authority to take this type of action, and we will be full participants as this case winds its way through the legal system.

Does Congress have a role? Yes it does. When the STB is reauthorized, Congress must also decide what path to take. Again, we would urge caution, not a rush to judgment based on short-term service problems. We would also urge Congress to take the path toward stability and viability, and not the path toward

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At the time of the STB's hearings, railroad stocks had lost approximately \$15 billion in value, or 25%, since the BNSF/CN merger announcement.

access and the financial stress and instability it would cause.